

## AVIATION REGULATORY UPDATE

### FAA PROPOSES NEW RULES FOR SLOT PROCEDURE AT LGA, JFK, AND EWR

The Federal Aviation Administration (FAA) has issued a Notice of Proposed Rulemaking (NPRM) replacing the temporary orders limiting operations at LGA, JFK and EWR. The new rules would become effective October 29, 2016 and would closely align with IATA guidelines. Hourly slot limits for scheduled operations would remain unchanged from the existing order. For JFK and EWR, the limits would be 81 scheduled operations and two unscheduled operations per hour (Daily 0600 to 2259). The daily limit would be 1205 slots between the hours 0600 to 2159. The NPRM also would require usage of an allocated slot 80% of the time for the same flight or series of flights in the scheduling season. LGA limits will remain the same.

The NPRM also outlines procedures for standalone slot transactions with potentially anti-competitive or adverse public interest effects. The FAA would forward all proposed transactions and their final terms to DOT for review. DOT would then have 14 days to review the transaction and determine if it can be approved.

The NPRM proposes to allow airlines to buy, sell, lease or trade slots on a secondary market and provides five alternatives:

- Alternative 1 - Privately-negotiated buy, sell, lease, and trade without prior public notice; request for FAA approval must include terms of transaction; terms of final transaction posted on the FAA Web site.
- Alternative 2 - FAA publishes a bulletin board notice of buy, sell, lease, and trade; bidding and negotiation between seller and bidders after public notice; request for FAA approval must include terms of transaction; terms of final transaction posted on the FAA Web site.
- Alternative 3 - FAA publishes a bulletin board notice of buy, sell, lease, and trade; negotiations prior to public notice permitted; bidding and negotiation between seller and bidders; request for FAA approval must include terms of transaction; terms of final transaction posted on the FAA Web site.
- Alternative 4 - FAA publishes a bulletin board notice of buy, sell, lease, and trade; bids posted on bulletin board; request for FAA approval must include terms of transaction; terms of final transaction posted on the FAA Web site.
- Alternative 5 - FAA publishes a bulletin board notice of buy, sell, and lease without identifying poster; cash-only bids posted on bulletin board without identifying bidders; seller must accept highest bid; request for FAA approval must include terms of transaction; terms of final transaction posted on the FAA Web site.

Comments on the NPRM are due on or before April 8, 2015.

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### DOT FINAL RULE REGARDING THE CARRIAGE OF MUSICAL INSTRUMENTS

On January 5, the U.S. Department of Transportation (DOT) issued a final rule regarding the carriage of musical instruments as carry-on or checked baggage on commercial passenger flights. The effective date of the rule is March 6, 2015. The rule applies to all U.S. certificated and commuter air carriers, air taxis, and U.S. indirect carriers such as public charter operators that operate scheduled and charter flights to, from or within the United States.

The rule states the following:

- **Small Instruments as Carry-On Baggage** – Carriers shall permit a passenger to bring a small musical instrument, such as a violin or a guitar, into the cabin without charging an additional fee (other than the standard fee a carrier may require for comparable carry-on baggage) if:
  1. the instrument can be stowed in a baggage compartment in the cabin or under a passenger seat; and
  2. there is space for such stowage when the passenger boards.
- **Large Instruments as Carry-On Baggage** – Carriers shall permit a passenger to bring a large musical instrument (one that does not meet the requirements of a small instrument) into the cabin without charging an additional fee (other than the cost of an additional ticket described below) if:
  1. the instrument is contained in a case or cover to avoid injury to other passengers;
  2. the weight of the instrument does not exceed 165 pounds or the applicable weight restrictions for the aircraft;
  3. the instrument can be stowed in accordance with FAA requirements for carriage of carry-on baggage or cargo;
  4. the instrument case does not contain any object not otherwise permitted to be carried in an aircraft cabin because of a U.S. law or regulation; and
  5. the passenger has purchased an additional seat to accommodate the instrument.
- **Large Instruments as Checked Baggage** – Carriers shall permit a passenger to transport as baggage an instrument that may not be carried in the cabin if:
  1. The sum of the length, width, and height of the outside linear dimensions of the instrument (including the case) does not exceed 150 inches or the applicable size restrictions for the aircraft;
  2. The weight of the instrument does not exceed 165 pounds or the applicable weight restrictions for the aircraft; and
  3. The instrument can be stowed in accordance with the requirements for carriage of carry-on baggage or cargo established by the FAA.

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### FAA FINAL SAFETY MANAGEMENT SYSTEM RULE FOR U.S. AIR CARRIERS ISSUED

On January 7, 2015, the FAA issued a final rule which requires most U.S. commercial airlines to implement a Safety Management System (SMS) by 2018. The rule builds on programs already in use by carriers to identify and reduce aviation risk.

The FAA defines SMS as the “formal, top-down, organization-wide approach to managing safety risk and assuring the effectiveness of safety risk controls.” It provides airlines with processes and tools to analyze data from daily operations, identify potential precursors to accidents, take measures to mitigate the risk and verify the program is effective.

The rule requires airlines to submit an implementation plan to the FAA within six months and implement a safety management system within three years. The rule also requires a single executive to oversee the SMS. The SMS defines “what” is expected rather than “how” the requirement is to be met. This approach permits each carrier to design a system that fits their organization. The SMS does not replace regular FAA oversight to ensure compliance with regulations.

### FAA RELEASES GUIDANCE FOR LAW ENFORCEMENT ON UAS OPERATIONS

On January 22, 2015, the FAA released guidance for law enforcement regarding unauthorized UAS operations. The guidance provided the legal framework for the operation of UAS and model aircraft and also outlined potential enforcement actions against unauthorized or unsafe UAS operators.

The FAA released the guidance to stress the importance of the FAA and state and local police working together in handling unauthorized UAS operations. In addition, the FAA explained that it does not intend to mix criminal law enforcement with agency administrative safety enforcements. At the same time, the FAA outlines how first responders and others can provide invaluable assistance to the FAA by collecting information at the scene.

### FINES UPDATE

The following fines were recently issued by DOT:

#### ***Southwest Airlines - \$1,600,000***

On January 15, DOT penalized Southwest Airlines \$1.6 million for violation of DOT’s tarmac delay rule and the carrier’s emergency contingency plan. An investigation by the Office of Aviation Enforcement and Proceedings showed that between January 2, 2014 and January 3, 2014, sixteen Southwest flights experienced tarmac delays at Chicago Midway International Airport (MDW) in excess of three hours. A contributing factor to the delays was a storm which

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started on December 31, 2013 and lasted through January 2, 2014 resulting in 12.3 inches of snow accumulation. In addition, Southwest experienced a malfunction of its crew scheduling system resulting in an unexpected staff shortage. The shortage hampered Southwest's ability to clear aircraft from the gate in a timely manner.

### ***Lufthansa - \$30,000***

DOT recently assessed Lufthansa \$30,000 in civil penalties and ordered it to cease and desist from engaging in unfair or deceptive practices or unfair methods of competition in violation of 49 USC § 41712. In response to a consumer complaint, DOT investigated Lufthansa's website and found evidence that the airline had advertised fares on its U.S. website that could not be purchased on that website. Specifically, for a short period in November 2013, Lufthansa advertised economy fares in its fare matrix for a roundtrip to and from the U.S. In some cases, after selecting an itinerary and continuing through the booking process, the lowest fares that were advertised in the fare matrix were omitted. Therefore, consumers could not purchase the lowest fares that were advertised on the website.

Lufthansa stated that this was due to a technical malfunction (fares for the lowest booking class failed to update during the periodic update to its website) and did not believe that such a malfunction should constitute a violation of 49 U.S.C. § 41712. Lufthansa agreed to the settlement offer, but did not waive its legal position on the question.

The following fines were recently proposed by the FAA:

### ***SkyWest Airlines - \$450,000***

The FAA proposed a civil penalty of \$450,000 against SkyWest Airlines for allegedly operating four aircraft on a total of 15 flights when they were not airworthy. The FAA alleges SkyWest failed to perform proper maintenance on air conditioning units in three Bombardier CL-600 jets and on the auxiliary generator in one Embraer EMB-120 turbo-prop plane following pilot reports of problems with those systems. An air conditioning unit failure in the Embraer resulted in the deployment of passenger oxygen masks and an emergency descent, the agency alleges.

### ***Horizon Airlines - \$390,000***

the FAA proposed a civil penalty of \$390,000 against Horizon Airlines for operating six Bombardier DHC-8s that were not airworthy on more than 2,600 flights in 2012 and 2013. Horizon had allegedly not tested and inspected its aircraft transponders every 24 months as required by FAA regulations.

### ***Hallmark Aviation - \$275,000***

The FAA proposed a civil penalty of \$275,000 against Hallmark Aviation Services for alleged violations of drug and alcohol testing regulations. Hallmark is a company that ensures operators have effective security programs in compliance with applicable TSA requirements. The FAA alleged that : (1)Hallmark failed to ensure it had received verified negative drug tests for 57

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employees prior to their hire in safety-sensitive functions; (2) 14 employees who performed safety-sensitive duties were not in Hallmark's random drug and alcohol testing pool at different times in 2013 and 2014; and (3) Hallmark failed to conduct random alcohol tests on any employees who performed safety-sensitive functions. FAA regulations require such tests on at least 10% of those workers.

### FAA PROPOSES HAZMAT PENALTIES

The FAA recently proposed civil penalties ranging from \$65,000 to \$1,300,000 against eight companies for violating the Administration's Hazardous Materials Regulations (HMR). In each case, the FAA alleged the company failed to declare the hazardous materials being transported and failed to properly class, describe, package, mark, and label the shipments in proper condition for shipment. The FAA further alleged each of the companies failed to ensure its employees had received the required training for shipping hazardous materials, and did not provide emergency response information with the packages.

The cases include the following:

- \$1.3 million against United Airlines for 120 instances of allegedly violating the HMR. Almost all of the alleged violations involved failing to provide the pilot in command with accurate information about hazardous materials aboard the aircraft, including the location of the materials on the aircraft; the materials' type, quantity, weight, proper shipping name, identification number and hazard class; dates of the flights; and confirmation that no damaged or leaking packages had been loaded onto the aircraft. The FAA further alleges that on two occasions, United improperly accepted hazardous materials and failed to retain copies of shipping papers. The hazardous materials included: lithium metal batteries, dry ice, corrosive liquids, radioactive materials, detonating fuses, compressed oxygen, engines, isopropanol, non-flammable aerosols, phosphoric acid, sodium hydroxide and ethanol solutions, air bag modules and printing ink.
- \$78,000 against Max-Pak, LLC of Lakeland Florida for offering six shipments containing dozens of spray and aerosol cans that contained flammable materials to Federal Express for transport by air. The packages broke apart during transport, exposing the cans.
- \$70,020 against CMC Construction Services, Inc. of Houston, Texas for offering a shipment containing twelve 17-ounce aerosol cans of flammable spray paint to FedEx for transport by air. FedEx personnel noticed the package was leaking.
- \$65,000 against Allender & Company, Inc. of Ferndale, Michigan for offering a shipment containing twelve 12-ounce cans containing flammable aerosol paint to UPS for air transportation.
- \$70,020 civil penalty against Viabox of Elkhart for offering two containers containing flammable aerosol automotive products to FedEx for shipment to Montreal, Canada. FedEx employees discovered the aerosol cans and notified the FAA.

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- \$63,000 against Wholesale Electric Supply for offering to UPS for shipment a fiberboard box containing two one-gallon containers of electric parts degreaser. Approximately two quarts of the hazardous material leaked from one of the containers.
- \$533,000 against Sears Holdings Management Corp. for offering to UPS 27 boxes, each containing one DieHard Portable Power Supply that encased a non-spillable battery, for air transportation to various locations in the United States. Workers at the UPS sort facility discovered six of the corrosive shipments were vibrating and one was warm to the touch.
- \$90,000 against Pearl Paint North America for offering to UPS a 5-gallon metal container of flammable paint for transportation by air.

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